

1 THE HONORABLE JOHN C. COUGHENOUR
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ABDIWALI MUSSE,

11 Plaintiff,

CASE NO. C18-1736-JCC

12 WILLIAM HAYES, *et al.*,

13 Defendants.

ORDER

14

15 This matter comes before the Court on the King County Defendants' motion for summary
16 judgment (Dkt. No. 43). Having thoroughly considered the parties' briefing and the relevant
17 record, the Court finds oral argument unnecessary and hereby GRANTS in part and DENIES in
18 part the motion for the reasons explained herein.

19 **I. BACKGROUND**

20 Early in the morning on November 1, 2015, while in bed, Mr. Musse was attacked by
21 Carl Alan Anderson. (Dkt. Nos. 43 at 5–6, 53 at 9–10.) At the time, both men were being held at
22 the King County Correctional Facility (“KCCF”) in unit 9SUB, an open dormitory-style area that
23 normally houses pre-trial detainees. (*Id.*) Mr. Musse had been arrested earlier that night for
24 driving under the influence. (Dkt. No. 43 at 2; 53 at 9.) This was the first time he had been in jail.
25 (Dkt. No. 53 at 9.) Mr. Anderson, on the other hand, had been booked into KCCF eight times.
26 (Dkt. No. 43 at 11.)

1 On this occasion, Mr. Anderson was held at KCCF after being arrested for punching a
 2 man in the face without apparent warning or provocation a few hours prior on the streets of
 3 Seattle. (Dkt. Nos. 43 at 3, 53 at 3.) KCCF initially declined to take custody of Mr. Anderson
 4 after his arrest, based upon a Jail Health Services Registered Nurse's medical evaluation. (Dkt.
 5 Nos. 43 at 3–4; 53 at 3.) Mr. Anderson was instead transferred to Harborview Medical Center for
 6 medical treatment before being returned to KCCF early the morning of November 1st. (*Id.*)
 7 According to Dr. Matthew Beecroft, the attending physician at the Harborview ER who treated
 8 Mr. Anderson, he was suffering from a “meth-induced psychosis.” (Dkt. No. 56-2 at 5–7.) After
 9 a few hours, Dr. Beecroft discharged him to police custody. (*Id.*) Dr. Beecroft would later
 10 explain that he was comfortable releasing Mr. Anderson “back into police custody . . . , [but]
 11 would not have released Mr. Anderson . . . if he had simply come into the ER on his own with
 12 these same symptoms” because there was a risk he “would . . . be a danger to himself or others.”
 13 (*Id.*)

14 When Mr. Anderson returned to KCCF, he was again evaluated by a Jail Health Services
 15 Registered Nurse and placed into the general population 9SUB unit, which also housed Mr.
 16 Musse. (Dkt. Nos. 43 at 5, 53 at 7–9.) Nobody at the Jail flagged Mr. Anderson as someone
 17 requiring separate medical or psychiatric housing. (*Id.*) According to the Supervisor's Incident
 18 Report, the attack occurred shortly thereafter, at 3:18 a.m., which Plaintiff alleges was less than
 19 twenty minutes after Mr. Anderson was placed in the 9SUB unit. (Dkt. Nos. 53 at 9–10, 55-4 at
 20 34–35.) Plaintiff claims that, as a result of the attack, he suffered “fractures to his left orbital
 21 socket, severe dental injuries, and a traumatic brain injury that will impact him for the rest of his
 22 life.” (Dkt. No. 53 at 1.)

23 Mr. Musse filed a complaint in King County Superior Court. (Dkt. No. 1-2). He named as
 24 defendants William Hayes, the Director of the King County Department of Adult and Juvenile
 25 Detention (“DAJD”); King County; and five John Doe defendants. (*Id.*) He asserted causes of
 26 action for “failure to protect” pursuant to 42 U.S.C. § 1983, general negligence, and negligence

1 and breach of contract claims based on alleged violations of the settlement agreement in
 2 *Hammer, et al. v. King County*, Case No. C89-0521-R (W.D. Wash 1998). (*Id.* at 9–13.)

3 Defendants King County and William Hayes (“King County Defendants”) removed the
 4 action to this Court and now move for summary judgment on all claims. (Dkt. Nos. 1, 43.) They
 5 argue Mr. Musse presents no evidence to support his claims and, therefore, there are no genuine
 6 disputes of material fact. (Dkt. No. 43 at 7.) They seek dismissal of all claims against them and
 7 of the claims against the John Doe Defendants, given Mr. Musse’s failure to identify specific
 8 individuals following discovery. (*Id.*)

9 In their reply, the King County Defendants also argue that Mr. Musse’s claims should be
 10 dismissed because the complaint does not adequately plead a § 1983 claim or a negligence claim
 11 predicated on inadequate screening of Mr. Anderson, given his behavior the evening of the attack
 12 and his criminal and psychological history. (Dkt. No. 57 at 2 – 3.) Instead, according to the King
 13 County Defendants, the complaint relies solely on Mr. Anderson’s Disciplinary History Risk
 14 Code (“DHRC”), as required by the *Hammer* agreement, for which neither the evidence nor Mr.
 15 Musse’s briefing would now support a § 1983 or tort-based negligence claim. (*Id.*)

16 **II. LEGAL STANDARD**

17 “The court shall grant summary judgment if the movant shows that there is no genuine
 18 dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.
 19 Civ. P. 56(a). A fact is material if it “might affect the outcome of the suit under the governing
 20 law,” and a dispute of fact is genuine if “the evidence is such that a reasonable jury could return
 21 a verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

22 “[A] party seeking summary judgment . . . bears the initial responsibility of informing the
 23 district court of the basis for its motion, and identifying those portions of [the record] which it
 24 believes demonstrate the absence of a genuine issue of material fact.” *Celotex Corp. v. Catrett*,
 25 477 U.S. 317, 323 (1986). “The burden on the moving party may be discharged by ‘showing’—
 26 that is, pointing out to the district court—that there is an absence of evidence to support the

1 nonmoving party's case." *Id.* at 325. Once the moving party meets its burden, the party opposing
 2 summary judgment "must do more than simply show that there is some metaphysical doubt as to
 3 the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).
 4 The nonmoving party must "show[] that the materials cited do not establish the absence . . . of a
 5 genuine dispute" or "cit[e] to particular parts of . . . the record" that show there is a genuine
 6 dispute. Fed. R. Civ. P. 56(c). When analyzing whether there is a genuine dispute of material
 7 fact, the "court must view the evidence 'in the light most favorable to the opposing party.'" "
 8 *Tolan v. Cotton*, 572 U.S. 650, 657 (2014) (quoting *Adickes v. S.H. Kress & Co.*, 398 U.S. 144,
 9 157 (1970)).

10 III. DISCUSSION

11 A. Scope of the Complaint

12 As a threshold matter, the Court finds the complaint satisfies Federal Rule of Civil
 13 procedure 8(a)(2) in that it provides Defendants fair notice of Plaintiff's § 1983 and tort-based
 14 negligence claims and the facts upon which they are based, *irrespective* of Mr. Anderson's
 15 DHRC. (*See* Dkt. No 1-2 at 5–8.)

16 B. Section 1983 Claims

17 The King County Defendants move for summary judgment on Mr. Musse's § 1983
 18 claims because, they argue, Mr. Musse presents no evidence of acts or omissions by Director
 19 Hayes that resulted in a deprivation of Mr. Musse's constitutional rights, and even if Mr. Musse
 20 had presented such evidence, Director Hayes is entitled to qualified immunity. (Dkt. No. 43 at 9–
 21 16.) The King County Defendants also argue that the § 1983 claims are insufficient to establish
 22 King County's municipal liability under *Monell*. (Dkt. No. 43 at 9–16.) The Court agrees with
 23 the King County Defendants' arguments with respect to Director Hayes but disagrees with their
 24 argument with respect to King County.

25 1. Director Hayes' Acts or Omissions

26 Mr. Musse alleges that the Director Hayes had a duty to protect him from Mr. Anderson

1 while Mr. Musse was subject to pre-trial detention and that by failing to do so, Director Hayes
 2 violated Mr. Musse's Fourteenth Amendment's Due Process rights. (Dkt. No. 1-2 at 5–10.) In
 3 order to establish a “failure to protect” Fourteenth Amendment claim, a plaintiff must show:

4 (1) The defendant made an intentional decision with respect to the conditions
 5 under which the plaintiff was confined; (2) Those conditions put the plaintiff at
 6 substantial risk of suffering serious harm; (3) The defendant did not take
 7 reasonable available measures to abate that risk, even though a reasonable officer
 8 in the circumstances would have appreciated the high degree of risk involved—
 9 making the consequences of the defendant’s conduct obvious; and (4) By not
 10 taking such measures, the defendant caused the plaintiff’s injuries.

11 *Castro v. Cnty. of L.A.*, 833 F.3d 1060, 1071 (9th Cir. 2016). A supervisor is not liable for the
 12 actions of a subordinate pursuant to 42 U.S.C. § 1983, unless the supervisor is either *personally*
 13 *involved* in the constitutional violation or there is a sufficient causal connection between the
 14 supervisor’s wrongful conduct and the constitutional violation. *Starr v. Baca*, 652 F.3d 1202,
 15 1207 (9th Cir. 2011).

16 Mr. Musse argues that Director Hayes is liable for Mr. Anderson’s allegedly inadequate
 17 intake screening because he authorized the Jail Mainframe Rehost Project, which resulted in
 18 critical information being unavailable to KCCF personnel during Mr. Anderson’s intake
 19 screening process. (*See* Dkt. No. 53 at 19–20.) But Mr. Musse provides no evidence that Director
 20 Hayes was personally involved in the Rehost Project. In fact, Mr. Musse admits that “Director
 21 Hayes . . . delegated the task of developing the jail policy for this project to Major Clark.” (Dkt.
 22 No. 53 at 19.) Mr. Musse summarily argues that it was Director Hayes’ “duty as the top official
 23 for the jail . . . to make sure such procedures were in place” to adequately screen pre-trial
 24 detainees while the computer system was down. (Dkt. No. 53 at 19.) But this argument is
 25 foreclosed by binding precedent, which does not provide vicarious liability for § 1983 claims.
 26

See, e.g., Hansen v. Black, 885 F.2d 642, 646 (9th Cir. 1989).

Given Mr. Musse’s failure to present evidence demonstrating that Director Hayes was
 personally involved with, or had a causal connection to, the technology breakdown allegedly
 resulting in Mr. Anderson’s attack of Mr. Musse, the Court must GRANT summary judgment to

1 Director Hayes on Mr. Musse's § 1983 claims.

2 2. Municipal Liability Under *Monell*

3 Mr. Musse also alleges that King County is liable for KCCF's "failure to protect" based
4 on its municipal liability. (Dkt. No. 1-2 at 10.) In order to establish municipal liability, Mr.
5 Musse must identify a policy or custom responsible for his injury. *See Monell v. Dep't of Soc.*
6 *Servs. of N.Y.C.*, 436 U.S. 658, 694 (1978). The evidence presented by Mr. Musse easily raises a
7 genuine dispute about these issues. He identifies a variety of policies and customs, including a
8 policy to classify detainees without regard to their history, a policy precluding screening nurses
9 from sharing medical records with booking officers, and a custom of assigning new inmates to
10 the general population even during times when computerized custody records to allow for a
11 comprehensive screening were unavailable. (Dkt. No. 53 at 15–16.) Accordingly, summary
12 judgment is DENIED as to Mr. Musse's § 1983 claims against King County.

13 C. **Negligence Claim**

14 The King County Defendants next move for summary judgment on Mr. Musse's
15 negligence claim, relying on the presumption that KCCF officials would have performed their
16 duty to use reasonable care when booking and housing Mr. Anderson. (Dkt. No. 43 at 16). But
17 Mr. Musse can overcome that presumption by putting forth some evidence demonstrating that
18 prison officials had "good reason to anticipate" that Mr. Anderson might injure another inmate
19 and evidence demonstrating "negligence on the part of" prison officials in failing to act upon it.
20 *Winston v. State/Department of Corrections*, 121 P.3d 1201, 1202 (Wash. 2005). Mr. Musse
21 easily meets this burden, thereby establishing material disputed facts on this issue.

22 The evidence Mr. Musse puts forward includes Mr. Anderson's patient records from
23 Harborview, indicating that he was delusional, which was included in Mr. Anderson's case file
24 available during his intake screening; the probable cause statement for Mr. Anderson's arrest that
25 evening, indicating that he attacked someone on the streets of Seattle without provocation; his
26 initial screening report, prepared before being initially declined by KCCF just a few hours prior

1 to the attack on Mr. Musse, which indicated that Mr. Anderson was under the influence of
 2 “meth;” testimony from a fellow inmate, who indicated that before the attack Mr. Anderson was
 3 “pacing around, saying things that made no sense . . . he was talking to himself saying things like
 4 we were talking about him and that he wanted to hurt someone and the Demons were going to
 5 make him do it.” (Dkt. No. 56-1 at 3, 10, 15; 56-2 at 5–7, 56-5 at 19–20.) This is sufficient to
 6 establish material disputed facts as to whether prison officials should have been aware of the
 7 risks Mr. Anderson posed yet negligently failed to act upon this information.

8 Accordingly, summary judgment is DENIED as to Mr. Musse’s negligence claim.

9 **D. Hammer Settlement Agreement Claims**

10 Mr. Musse’s complaint makes frequent references to, and includes a copy of, the consent
 11 decree reached in *Hammer, et al. v. King County, et al.*, Case No. C89-0521-R (W.D. Wash
 12 1998). (*See, e.g.*, Dkt. No. 1-2 at 4, 5, 7, 8, 18–41.) The consent decree requires, among other
 13 things, that King County develop and maintain a procedure to track inmates with violent
 14 histories within KCCF to ensure that those individuals receive appropriate initial housing
 15 assignments based on the risks they present. (*See* Dkt. No. 1-2 at 27–28.) Mr. Musse’s complaint
 16 brings two claims predicated on KCCF’s alleged failure to abide by the Agreement: negligent
 17 implementation of the Agreement and breach of contract. (Dkt. No. 1-2 at 11–13.)

18 The King County Defendants move for summary judgment on both claims, arguing that
 19 Mr. Musse presents no evidence to support his allegation that they breached a duty of care
 20 established by the agreement or the agreement itself. (Dkt. No. 43 at 16–20.) The Court agrees.
 21 In fact, not only does Mr. Musse not present any evidence addressing the King County
 22 Defendants’ compliance with the Agreement, Mr. Musse does not even *argue* that the King
 23 County Defendants failed to comply with the Agreement. (*See generally* Dkt. No. 53.) Therefore,
 24 the Court is left with no choice but to conclude that Mr. Musse fails to establish a genuine
 25 dispute of material fact with respect to the King County Defendants’ compliance with the
 26 *Hammer* agreement. Accordingly, summary judgment is GRANTED as to Mr. Musse’s claims

for negligent implementation of the *Hammer* Agreement and breach of contract with respect to the *Hammer* Agreement.

E. John Doe Defendants

Finally, the King County Defendants move for summary judgment on all claims against the John Doe Defendants, arguing that it is well past the appropriate time to allow the case to continue with unnamed defendants. (Dkt. No. 43 at 20–21.) The Court agrees. While a plaintiff is allowed an opportunity to identify unknown defendants during the discovery period, *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980), that period lapsed almost six months ago, (Dkt. No. 32), and Mr. Musse still has not identified these defendants or even argued in his response that the claims against these defendants should survive. (*See generally* Dkt. No. 53.) Accordingly, summary judgment is GRANTED as to Mr. Musse’s claims against the John Doe defendants.

IV. CONCLUSION

For the foregoing reasons, Defendants' motion for summary judgment (Dkt. No. 43) is GRANTED in part and DENIED in part. Mr. Musse's § 1983 claim against King County survives, as does his negligence claim against the King County Defendants. Mr. Musse's remaining claims are DISMISSED with prejudice.

DATED this 16th day of April 2021.

John C. Coyne, Jr.

John C. Coughenour
UNITED STATES DISTRICT JUDGE